IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2398 OF 2006

Kalluraj Banami Raj ..Petitioner

Vs.

The Sr.Inspector of Police
Chembur P.St. & Ors. ..Respondents

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Mr.R.V.Pai i/b Basant Tilokani & Co. for Petitioner
Mr.S.R.Borulkar, P.P. for the State

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CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : FEBRUARY 14, 2007

P.C.

1. Heard Mr.Pai, the learned advocate for the petitioner and Mr.Borulkar, the learned P.P. for the State.

2. The main prayer of the petitioner in this petition is that his daughter Kajal be released from the Government Special Rehabilitation Centre, Deonar where she is lodged and her custody be handed over to the petitioner who claims to be her father.

3. On 28.3.2006, Police Officers of Chembur Police

Station raided a restaurant-cum-bar named as Commander Beer Bar situated at Swastik Park, Chembur. In the said raid, seven girls were rescued from the said Beer Bar and an offence came to be registered vide L.A.C. No.463 of 2006 under Sections 3,4,5,7(1-a) of Immoral Traffic (Prevention) Act, 1956. Out of 7 victim girls, two girls were found to be minor i.e. the petitioner's daughter Kajal and one Manjula. All the victim girls were produced before the learned Addl.Chief Metropolitan Magistrate, 11th Court, Kurla, Mumbai. The learned Magistrate on seeing the medical reports and on finding that these two girls were minor, handed them over to safe custody of Child Welfare Board, Deonar, Mumbai. Being aggrieved by the said order, the petitioner challenged the said order before the learned Sessions Court. The revision application came to be dismissed by order dated 17.10.2006. Being aggrieved by the said order, this writ petition has been preferred.

4. Mr.Borulkar, the learned P.P. for the State, has pointed out that as far as Kajal is concerned, she was earlier rescued from Priyanka Beer Bar on 16.7.2004. After that as per the order of the

Court, on 27.8.2004, the custody of Kajal was given to her father i.e. the present petitioner. Mr.Borulkar has pointed out that Kajal was earlier given in the care of her father i.e. the present petitioner after she was rescued from Priyanka Beer Bar but thereafter, again on 28.3.2006, Kajal was again rescued from another Beer Bar i.e. Commander Beer Bar i.e. the present case. Thus, he has pointed out that though the custody of Kajal was handed over to her father i.e. the present petitioner, he has not taken care of his daughter and has not given the necessary care and protection, which is clear from the fact that even though Kajal's custody was handed over to the petitioner, she was found working in a Beer Bar and had to be rescued again.

5. Mr.Borulkar, submitted that the Juvenile Justice (Care and Protection to the Child) Act, 2000 provides for "child in need for care and protection". As per the report of the Child Welfare Committee (C.W.C.) the petitioner Kalluraj Banami Raj was interviewed by C.W.C. Before the Committee, he accepted that his daughter was earlier rescued and thereafter, he had taken

custody of her for taking proper care. Mr.Borulkar stated that thereafter, the petitioner is now again demanding the custody of Kajal. Mr.Borulkar pointed out that before the C.W.C. the petitioner mentioned that Kajal came to Mumbai with some friends, thereafter he did not make any efforts to search for Kajal or find out her whereabouts. Thereafter when Kajal was rescued for the second time, the petitioner came to Mumbai to take her custody. From these facts, it is clear that the petitioner has failed in his prime responsibility of giving proper care and protection to his daughter Kajal. The petitioner does not seem to be equipped to give proper care and protection to her. After interviewing the petitioner and after looking into other aspects of the matter, the C.W.C. came to the conclusion that Kajal needs to be properly rehabilitated to be empowered so that she can stand on her own feet.

6. Mr.Pai has pointed out that as per the provisions of Section 2(d)(i) of the Act, a child in need of care and protection is one who is without any home or settled place or abode and without any ostensible means of subsistence. He

has submitted that it is only a child who is covered by this sub-section who can be kept in the Special Home. Mr.Pai submitted that Kajal has a home and settled place i.e. where the petitioner resides in Rajasthan. However, in my opinion, it is clear that the petitioner was not able to give the necessary care and protection to his daughter and looking to the facts of this case, it cannot be said that Kajal had a settled place or that she had any ostensible means of subsistence. From the facts of this case, it is clear that Kajal is a child in need of care and protection and hence, the provisions of this Act, would apply to her. Kajal has been admittedly produced before the C.W.C. and the Committee has interviewed the father i.e. the petitioner and after going through all these aspects of the matter, the C.W.C. has reached to the conclusion that Kajal cannot be handed over to the petitioner. The purpose of enquiry under Section 39 is restoration of and protection to the child. Protection of the child is the first and foremost prime object. The Committee has kept this object in mind. Thus, I find no merit in the submission of Mr.Pai that no enquiry was conducted by C.W.C. to find out if Kajal is in need of care

and protection.

7. Thereafter, Mr.Pai submitted that Kajal is over 18 years of age and hence, she cannot be kept in Government Special Rehabilitation Centre. In support of the contention that Kajal is over 18 years of age, he has placed reliance on Transfer Certificate issued from one St.Peters N.School, Dhaulpur. However, the investigating agency has made enquiries regarding this Transfer Certificate and it is found that said certificate is forged. After enquiry, it was found that no such transfer certificate in the name of the victim girl was issued from the said school. In view of this fact, the transfer certificate cannot be relied upon. In order to ascertain the age of Kajal, ossification tests have been conducted by the police and certificate to that effect was issued. The said certificate is dated 18.12.2006. In the said certificate, it is stated that Kajal's age is 18 years plus or minus six months. This would mean that today Kajal could be 17 years and 8 months old or 18 months 8 months as the ossification tests are never exact and they always give approximate age, in my view, it would be better to err on the side

of caution and hold that the girl is 17 years 8 months keeping her safety, care and protection in mind.

8. Mr.Pai has thereafter submitted that Section 39 states about the restoration of the child to his parents. However, on perusal of Section 39, one finds that it also speaks of protection to a child. Looking to the facts of this case, restoring the girl Kajal to her parents, would not be in her best interest and infact, keeping her in custody of the Government Special Rehabilitation Centre till she becomes major i.e. till 18th June, 2007 would be in the best interest of the child.

9. Thereafter, Mr.Pai has drawn my attention to Rule 8(5). Rule 8(5) reads as under:

> *8. Procedure to be followed when child is produced before the Committee:-*
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> (5) Every possible effort shall be made to trace and associate the child with its family. Assistance of

recognised voluntarily organizations or childline may also be taken.

. Mr.Pai submitted that every possible effort should be made to associate the child with its family. He has submitted that the family is the most healthy environment for a child and hence, a child has to be returned to the family. However, in the present case, looking to the fact that Kajal after being rescued earlier, was handed over to the present petitioner i.e. her father and again thereafter she had to be rescued by the police, speaks volume about the inability of the petitioner to provide proper care and protection to his daughter Kajal. In such case, when it goes against the interest of the child, the child cannot be handed over to the parents or her family. The Probation Officer who is working with the Government Special Rehabilitation Centre, Deonar Mumbai, has stated in her affidavit that at present Kajal does not want to go with her family. At present, Kajal has been transferred to Naujyouti Shelter Home, Andheri for illiteracy and Vocational Training as per the order of C.W.C. The petitioner Mr.Kalluraj has stated to the C.W.C. that he is

aware about Kajal learning stiching, embroidery, knitting and literacy in the institution and that she is working to become self-reliant. Thus, looking to all these facts, I am of the opinion that the custody of Kajal should not be handed over to her father till she attains majority. Hence, prayer of the petitioner is rejected. As per the medical certificate dated 18.12.2006, if one takes a cautious view, the age of Kajal would be 17 years and 6 months as on 18.12.2006. Thus, according to this certificate Kajal would attain majority on 18.6.2007. It is made clear that on that day, Kajal is free to go back to her parents if she wishes.

10. Writ petition is disposed of.

[Smt. V.K.Tahilramani, J.]